IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA ORPHANS' COURT DIVISION

IN RE: ADOPTION OF	:	NO. 6636
	:	
NH,		
minor child,		
minor cinia,	•	

OPINION AND ORDER

AND NOW, this 29th day of August, 2019, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, CK, and her husband, BK, on April 16, 2019. Said petition is with regard to the parental rights of CK's child, NH, born August 13, 2013. Mother and her husband seek to terminate the parental rights of the child's biological father, BH, as a prerequisite to having the child adopted by Mother's husband. The Petition for Involuntary Termination of Parental Rights and Petition for Adoption were served upon BH on April 25, 2019, via certified mail. A pretrial conference on the Petition was held on June 7, 2019. Father did not appear at the pre-trial conference. An Order was entered by this Court on June 7, 2019, advising BH that if he wished to participate in the hearing on the termination of his parental rights and have counsel appointed for him, he must advise the Court in writing by June 28, 2019. BH had no contact with the Court concerning his participation in the hearing or the appointment of counsel on his behalf. A hearing on the Petition to Involuntarily Terminate the Parental Rights was held on August 27, 2019. BH did not appear, despite the Court finding that he had proper notice of the hearing. BK and CK appeared with their counsel, Trisha Hoover Jasper, Esquire.

Finding of Facts

1. NH ("Child") was born on August 13, 2013. The child currently resides with her mother, CK ("Mother"), and Mother's husband, BK ("Stepfather"), at 1344 Four Mile Drive, Williamsport, Lycoming County, Pennsylvania. Mother and Stepfather have been married since September 10, 2017.

2. The Child's biological father is BH ("Father"). Father resides at 17 S. Main Street, Montgomery, Pennsylvania.

3. At the time of the Child's birth, Mother and Father were unmarried and Mother and the Child lived with Mother's mother.

4. Father saw the Child weekly for the first two months of the Child's life.

5. Father's contact with the child decreased to approximately one time per month through January of 2014.

6. Father's last contact with the Child was on Father's Day, 2014.

7. Father's last contact with Mother was via text on the Child's first birthday in August of 2014.

8. Father has never filed an action for custody in an attempt to establish or enforce his custodial rights to the Child.

9. Mother filed an action for child support, which was subsequently

dismissed because Father lost his job prior to the conference.

10. Mother has never sought to reopen the child support case, and Father has not independently financially supported her in any way since the Child was a few months old.

11. Father has never sent cards or gifts to the Child for her birthday or holidays.

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12. Mother had the same phone number for at least 3 years after Father's last contact with the Child and he did not reach out to her at that time.

13. Mother has a Facebook account but Father has never attempted to contact her using social media.

14. Father has never reached out to Mother's family members in an attempt to contact her or inquire about the Child.

15. Stepfather has been involved with the Child since she was 2 $\frac{1}{2}$ years old.

16. Mother and Stepfather have a child together, who is the Child's half-

sibling.

17. The Child calls Stepfather "Daddy."

18. Stepfather has a father/daughter relationship with the Child. He loves and

supports the Child and treats her as his biological child.

19. Child has no relationship with Father. She is unaware that Stepfather is

not her biological father.

Discussion

Mother and Stepfather argue that the basis for termination in this case may be

found in 23 Pa.C.S. §2511(a)(1) and (a)(2), which provide as follows:

§2511. Grounds for Involuntary Termination

(a) GENERAL RULE.--The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:

(1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties. (2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.

A court may terminate parental rights under Section 2511(a)(1) where a parent

demonstrates a settled purpose to relinquish parental claim to a child **or** fails to perform

parental duties for at least six months prior to the filing of the termination petition. In the

Interest of C.S., 761 A.2d 1197, 1201 (Pa. Super. 2000). In the instant case, Father

has demonstrated both. When determining whether to terminate the rights of a parent,

the Court should consider the entire background of the case and not simply:

mechanically apply the six month statutory provision. The court must examine the individual circumstances of each case and consider all explanations offered by the parent facing termination of his . . . parental rights, to determine if the evidence, in light of the totality of the circumstances, clearly warrants the involuntary termination.

In re: B.N.M., 856 A.2d 847, 855 (Pa. Super. 2004), appeal denied, 582 Pa. 718, 872

A.2d 1200 (2005) citing In re: D.J.S., 737 A.2d 283, 286 (Pa. Super. 1999).

In determining what constitutes parental duties, the Pennsylvania Supreme Court

has said:

There is no simple or easy definition of parental duties. Parental duty is best understood in relation to the needs of a child. A child needs love, protection, guidance, and support. These needs, physical and emotional, cannot be met by a merely passive interest in the development of the child. Thus, this Court has held that the parental obligation is a positive duty which requires affirmative performance. This affirmative duty encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child. Because a child needs more than a benefactor, parental duty requires that a parent "exert himself to take and maintain a place of importance in the child's life."

With these principles in mind, the question whether a parent has failed or refused

to perform parental duties must be analyzed in relation to the particular circumstances of the case. A finding of abandonment, which has been characterized as "one of the most severe steps the court can take," will not be predicated upon parental conduct which is reasonably explained or which resulted from circumstances beyond the parent's control. It may only result when a parent has failed to utilize all available resources to preserve the parental relationship.

In re: Burns, 379 A.2d 535, 540 (Pa. 1977)(citations omitted).

The Court finds as of the date of the filing of the Petition for Involuntary Termination of Parental Rights, Father had evidenced both a settled purpose of relinquishing parental claim to the Child and had failed to perform his parental duties for a period well in excess of six (6) months. Following the Child's birth, Father saw her weekly at most, and by the time she was a few months old Father was seeing the Child approximately once a month. Father's last in-person contact with the Child was more than 5 years ago, on Father's Day in 2014, and Child was under one year of age at the time. Father has not financially supported Mother and Child, nor has he sent the Child cards, letters, or gifts for birthdays or holidays.

A parent has an affirmative duty to be part of a child's life; Father has clearly not met this affirmative duty. Father has not even shown a passive interest in the Child for most of the Child's life. Father failed to file a custody action with the Court to establish or enforce his custodial rights. In fact, Father did not even bother to reach out to Mother or Mother's family members to inquire about the Child's health and well-being, or to attempt to arrange visits with the Child. Mother had the same phone number for at least three years after Father's last contact with the Child and has maintained a Facebook account that he could use to contact her. The Court finds Mother placed no obstacles in

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Father's path which would have prevented him from exercising his parental rights, privileges, and obligations with regard to Child.

This Court further finds that Mother and Stepfather have clearly established that Father has evidenced a settled purpose of relinquishing parental claim to the Child and has refused or failed to perform parental duties for a period far in excess of six months. This settled purpose of relinquishment is especially apparent given the fact that, despite being properly served, Father failed to appear for the hearing on the Petition for Involuntary Termination.

As only one subsection of 23 Pa.C.S. §2511(a) must be established by clear and convincing evidence in order to proceed to an analysis under 23 Pa.C.S. §2511(b), and the Court has found that the statutory grounds for termination have been met pursuant to 23 Pa.C.S. §2511(a)(1), the Court will not address the averments that termination is also warranted under 23 Pa.C.S. §2511(a)(2).

As the statutory grounds for termination have been met, the Court must also consider the following:

23 Pa.C.S. § 2511(b) OTHER CONSIDERATIONS.—The Court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent. With respect to any petition filed pursuant to subsection (a)(1), (6) or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

The Court must take into account whether a bond exists between the child and

parent, and whether termination would destroy an existing, necessary and beneficial

relationship. In the Interest of C.S., supra, at 1202. When conducting a bonding

analysis, the Court is not required to use expert testimony. <u>In re: K.K.R.-S.</u>, 958 A.2d 529, 533 (Pa. Super. 2008) (citing <u>In re: I.A.C.</u>, 897 A.2d 1200, 1208-1209 (Pa. Super. 2006)). "Above all else . . . adequate consideration must be given to the needs and welfare of the child." <u>In re: J.D.W.M.</u>, 810 A.2d 688, 690 (citing <u>In re: Child M.</u>, 681 A.2d 793 (Pa. Super. 1996), appeal denied, 546 Pa. 674, 686 A.2d 1307 (1996)). A parent's own feelings of love and affection for a child do not prevent termination of parental rights. **In re: L.M.**, 923 A.2d 505, 512 (Pa. Super. 2007).

Before granting a petition to terminate parental rights, it is imperative that a trial court carefully consider the *intangible* dimension of the needs and welfare of a child--the love, comfort, security and closeness--entailed in a parent-child relationship, as well as the tangible dimension. Continuity of relationships is also important to a child, for whom severance of close parental ties is usually extremely painful. The trial court, in considering what situation would best serve the children's needs and welfare, must examine the status of the natural parental bond to consider whether terminating the natural parents' rights would destroy something in existence that is necessary and beneficial.

In the Interest of C.S., supra., at 1202 (citations omitted).

In the present case, it is clear that Child has no bond with Father. The Child refers to Mother's Husband as "Dad." Father has no contact with the Child since before the Child's first birthday. Termination of Father's rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between Father and the Child. In fact, the Child is unaware that Stepfather is not her biological father. Child is bonded to Stepfather, who has been involved in her life since she was 2 ½ years old, and who is the only father-figure the Child would know. It is evident to the Court that Stepfather loves and cares for Child and treats her as his own. They, along with Mother and Stepfather's child together, are an established family unit. Stepfather has stepped in and provided the love and support Child needs and has assumed the

parental responsibilities that Father has utterly failed to perform and has evidenced a settled purpose of relinquishing.

The Court is satisfied that both Mother and Stepfather understand the potential consequences of allowing Stepfather to adopt Child, and that termination Father's parental rights and allowing the adoption by Stepfather to proceed is in the best interest of the Child.

Conclusions of Law

 The Court finds that CK and BK have established by clear and convincing evidence that BH's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that CK and BK have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of NH will best be served by termination of BH's parental rights.

Accordingly, the Court will enter the attached Decrees.

By the Court,

Joy Reynolds McCoy, Judge

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA ORPHANS' COURT DIVISION

IN RE: ADOPTION OF	: NO. 6636
	:
NH,	:
minor child,	
	<u>DECREE</u>

AND NOW, this 29th day of August, 2019, after a hearing on the Petition for

Involuntary Termination of the Parental Rights of BH, held on August 28, 2019, it is

hereby ORDERED and DECREED:

- (1) That the parental rights of BH be, and hereby are, terminated as to the child above-named;
- (2) That the welfare of the child will be promoted by adoption; that all requirements of the Adoption Act have been met; that the child may be the subject of adoption proceedings without any further notice to the natural father.

NOTICE TO NATURAL PARENTS PENNSYLVANIA ADOPTION MEDICAL HISTORY REGISTRY

This is to inform you about an adoption law provision relating to medical history information. As the birth parent of a Pennsylvania born child who is being, or was ever adopted in the past, you have the opportunity to voluntarily place on file medical history information. The information which you choose to provide could be important to this child's present and future medical care needs.

The law makes it possible for you to file current medical information, but it also allows you to update the information as new medically related information becomes available. Requests to release the information will be honored if the request is submitted by a birth child 18 years of age or older. The law also permits that the court honor requests for information submitted by the adoptive parents or legal guardians of adoptees who are not yet 18 years of age. All information will be maintained and distributed in a manner that fully protects your right to privacy.

You may obtain the appropriate form for you to file medical history information by contacting the Adoption Medical History Registry. Registry staff are available to answer your questions. Please contact them at:

Department of Human Services Pennsylvania Adoption Information Registry P.O. Box 4379 Harrisburg, PA 17105-17111 Telephone: 1-800-227-0225

Medical history information forms may also be obtained locally by contacting one of the following agencies:

- 1. County Children & Youth Social Service Agency
- 2. Any private licensed adoption agency
- 3. Register & Recorder's Office
- 4. Online at <u>www.adoptpakids.org/Forms.aspx</u>

By the Court,

Joy Reynolds McCoy, Judge